



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF APRIL 29, 2002

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#02-67 Davis v. Smith, S105520. (B157419.) Appeal pending in the Court of Appeal transferred to the Supreme Court on the court's own motion under California Rules of Court, rules 20(a) and 27.5(a).

#02-68 In re Rosenkrantz, S104701. (B151016; 95 Cal.App.4th 358.) Petition for review after the Court of Appeal affirmed an order granting relief in a proceeding for a writ of habeas corpus.

Davis and Rosenkrantz include the following issues: (1) When the Governor, pursuant to Penal Code section 3041.2, determines that a prisoner should not be released on parole, reversing a contrary decision of the Board of Prison Terms, is the Governor's decision subject to judicial review? (2) If so, what is the standard of review for such a decision? (3) In Rosenkrantz, did the "law of the case" doctrine preclude the Governor from exercising his power under Penal Code section 3041.2 to reverse a parole decision of the Board of Prison Terms where the Court of Appeal had previously found no evidence in the record to support the Board's decision that petitioner Rosenkrantz was unsuitable for parole and the Board had then granted parole under the compulsion of that decision?

(over)

#02-69 Ferguson v. Lieff, Cabraser, Heimann & Bernstein, S104444. (A091877; 95 Cal.App.4th 154.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Can damages be recovered in a legal malpractice action for the loss of a punitive damages claim?

#02-70 People v. Floyd, S105225. (F037295; 95 Cal.App.4th 1092.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of a criminal offense. This case includes the following issues: (1) Does the Substance Abuse and Crime Prevention Act of 2000 (Prop. 36, General Elec. (Nov. 7, 2000)), which requires probation and drug treatment rather than incarceration for defendants convicted of specified non-violent drug offenses, apply to defendants who were convicted and sentenced prior to the Act's effective date of July 1, 2001, but whose convictions were pending on appeal when the Act became effective, or only to defendants convicted or sentenced on or after July 1, 2001? (2) If the latter, does limiting the application of Proposition 36 in this fashion deny a defendant whose conviction was pending on appeal on that date the constitutional right to equal protection of the law?

#02-71 Haynes v. Farmers Ins. Exchange, S104851. (G028171; 95 Cal.App.4th 588.) Petition for review after the Court of Appeal reversed a summary judgment in a civil action. This case presents the following issue: Was the provision in an automobile insurance policy limiting the coverage for permissive users to the minimum required by statute sufficiently clear and conspicuous to be enforceable?

#02-72 MacKinnon v. Truck Ins. Exchange, S104543. (E028662; 95 Cal.App.4th 235.) Petition for review after the Court of Appeal affirmed the summary judgment in a civil action. This case includes the following issue: Does the "pollution exclusion" provision of a commercial comprehensive general liability policy apply to, and support an insurer's refusal to defend, a wrongful death action filed against the insured (a landlord) to recover damages for a tenant's death that was allegedly caused by the intentional spraying of a pesticide to exterminate yellow jackets on the leased premises?

#02-73 People v. Mosby, S104862. (C033593; 95 Cal.App.4th 967.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: Was the trial court's failure to expressly advise

defendant of his constitutional rights and to obtain a waiver of those rights before accepting his admission to a prior conviction allegation reversible error?

#02-74 Topsail Court Homeowners Assn. v. County of Santa Cruz, S104952. (H022122; 95 Cal.App.4th 835, mod. 96 Cal.App.4th 954a.) Petition for review after the Court of Appeal reversed the judgment in a proceeding for a writ of mandate. This case presents the following issue: Is a proposed water treatment plant located at the wellhead source of water a “facility for the production, generation, storage or transmission of water” within the meaning of Government Code section 53091 and thus exempt from local zoning regulations?

#02-75 In re Varnell, S104614. (B153849; 95 Cal.App.4th 205, mod. 96 Cal.App.4th 442a.) Petition for review after the Court of Appeal granted relief in a proceeding for a writ of habeas corpus. This case presents the following issue: When a defendant is convicted of a nonviolent drug possession offense but has a prior serious or violent felony conviction and has not remained free from custody for five years prior to the current offense, does the trial court have the discretion under Penal Code section 1385 to strike the prior conviction in order to render the defendant eligible for probation and drug treatment, rather than incarceration, under the provisions of the Substance Abuse and Crime Prevention Act of 2000 (Prop. 36, General Elec. (Nov. 7, 2000))?

#02-76 People v. Haselman, S105031. (F035862; 95 Cal.App.4th 1055.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in People v. Reliford, S103084 (#02-23), which presents the following issues: (1) Does CALJIC 2.50.01 (1999 rev.) correctly instruct on the burden of proof where evidence of prior sexual offenses is admitted under Evidence Code section 1108; and (2) if not, is the error subject to review for harmless error and what is the applicable standard of review?

#02-77 In re Jerry P., S104863. (B146667; 95 Cal.App.4th 793, mod. 96 Cal.App.4th 954b.) Petition for review after the Court of Appeal reversed an order in a dependency proceeding. The court ordered briefing deferred pending decision in *In re Nicholas H.*, S100490 (#01-150), which presents the following issues: (1) Does the term “natural father” in Family Code section 7611 mean “biological father?” (2) Is an

individual's status as a "presumed father" under Family Code section 7611 necessarily rebutted under Family Code section 7612 by the presumed father's admission he is not the child's biological father?

#02-78 Pacific Gas & Electric Co. v. Superior Court, S104412. (A093509; 95 Cal.App.4th 1389.) Petition for review after the Court of Appeal granted a petition for a peremptory writ of mandate. The court ordered briefing deferred pending decision in People ex rel. Orloff v. Pacific Bell, S099131 (#01-121), which presents the following issue: Is an unfair competition action brought by a district attorney in the name of the People against a public utility barred if a parallel proceeding is pending before the Public Utilities Commission?

#02-79 People v. Snow, S105345. (D035655; 96 Cal.App.4th 239.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of a criminal offense. The court ordered briefing deferred pending decision in People v. Acosta, S089120 (#00-104) and People v. Cornelius, S068743 (#00-94), which include the following issues: (1) Do the "one strike" law (Pen. Code, § 667.61) and the "three strikes" law (Pen. Code, § 667, subds. (b)-(i), 1170.12) operate together or exclusively of one another? (2) Can the same prior conviction be used to qualify a defendant for sentencing under the "one strike" law (Pen. Code, § 667.61) and the "three strikes" law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12)?

DISPOSITIONS

#02-04 Velazquez v. Metropolitan Water District, S101248, was transferred to the Court of Appeal for reconsideration in light of Hooker v. Department of Transportation (2002) 27 Cal.4th 198.

The following cases were transferred to the Court of Appeal for reconsideration in light of Richards v. CH2M Hill, Inc. (2001) 26 Cal.4th 798:

#00-130 Raney v. Department of Developmental Services, S091641.

#01-72 Tabares v. The Daily News, S097329.

#01-95 Valdez v. Clayton Industries, Inc., S098425.

The following cases were dismissed and remanded to the Court of Appeal:

#01-70 Flores v. City and County of San Francisco, S097661.

#01-138 Villafana v. Camco Pacific Construction Co., S100657.

#01-163 Harty v. Vance Brown Inc., S101731.

#01-169 People v. Patterson, S101726.

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